

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

Greystar Development & Construction, L.P.)	
)	
Plaintiff,)	Civil Action No.: 2:06-1434-CWH
)	
vs.)	
)	ORDER
Virginia Surety Co., Inc.)	
Defendant.)	
)	

This dispute arises out of comprehensive general liability policies issued by the defendant to the plaintiff. The plaintiff, a general contractor, constructed a condominium complex in Daniel's Island, South Carolina. The homeowners' association of the condominium complex subsequently sued the plaintiff for damages to the complex. The plaintiff notified the defendant of the suit, but the defendant refused to defend the plaintiff or indemnify the plaintiff for damages resulting from the suit.

The plaintiff and the homeowners' association settled the suit. On May 10, 2006, the plaintiff commenced this action in state court alleging breach of contract and bad faith refusal to indemnify or defend the plaintiff in the homeowners' association suit. The plaintiff also seeks a declaratory judgment that the defendant is obligated to reimburse the plaintiff for a portion of its defense costs incurred during the defense of the homeowners' association suit and to indemnify the plaintiff for the damages paid to the homeowners' association.

On May 10, 2006, the defendant removed the action to this Court and filed a motion to dismiss pursuant to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure. The defendant claims that under South Carolina law, faulty workmanship is not an occurrence which requires the defendant to indemnify the plaintiff. *See L-J, Inc. v. Bituminous Fire and Marine*

Ins. Co., 621 S.E.2d 33, 36 (S.C. 2005).

However, to resolve this dispute the Court must look to evidence outside the pleadings, such as the policies at issue. Consequently, the motion to dismiss is denied without prejudice to allow the defendant to move for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 12(b).

AND IT IS SO ORDERED.



C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

July 24, 2006
Charleston, South Carolina